

## SENATE BILL NO. 305

INTRODUCED BY M. COONEY

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT A VACANCY IN THE SENATE BE FILLED BY AN ELECTION UNLESS THE VACANCY OCCURS DURING A SESSION; AMENDING SECTIONS 5-2-401, 5-2-402, 5-2-404, 5-2-405, 5-2-406, AND 5-2-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 5-2-401, MCA, is amended to read:

**"5-2-401. Definitions.** (1) As used in 5-2-406, "term" means the ~~4-year~~ period to which a ~~senator~~ legislator is normally elected in the absence of a vacancy under Article V, section 3, of the Montana constitution.

(2) For the purposes of this part, "vacancy" or "vacancies" has the same meaning as prescribed in 2-16-501."

**Section 2.** Section 5-2-402, MCA, is amended to read:

**"5-2-402. Appointment Vacancy in house of representatives -- appointment by board of county commissioners -- county central committee role -- timeframes.** (1) Except as provided in subsection (5) or as otherwise provided by law, whenever a vacancy occurs in the ~~legislature~~ house of representatives, the vacancy must be filled by appointment by the board of county commissioners or, in the event of a multicounty district, the boards of county commissioners of the counties ~~comprising~~ composing the district sitting as one appointing board.

(2) (a) Whenever ~~a~~ the vacancy is within a single county, the board of county commissioners shall make the appointment as described in 5-2-403, or 5-2-404, ~~or 5-2-406~~.

(b) Whenever ~~a~~ the vacancy is within a multicounty district, the boards of county commissioners shall sit as one appointing board. The selection of an individual to fill the vacancy must be as follows:

(i) The presiding officer of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislature and shall preside at the meeting.

(ii) Each commissioner's vote is determined by the following formula: 100 multiplied by (A divided by B)

1 multiplied by (1 divided by C), where:

2 (A) A is the total votes cast in the respective county for the person vacating the legislative seat or, if the  
3 vacating person was not elected, the votes cast for the last person to be elected for the current term;

4 (B) B is the total votes cast for that person in the legislative district; and

5 (C) C is the number of authorized commissioners on the board of the commissioner whose vote is being  
6 determined.

7 (iii) The person selected to fill the vacancy is the one who receives the highest number above 50 that  
8 results from the calculation in subsection (2)(b)(ii). If none of the candidates receives a number higher than 50  
9 from that calculation, the selection board shall cast its votes again in the same manner for the persons receiving  
10 the two highest numbers. If neither vote results in a candidate receiving a number higher than 50 from the  
11 calculation provided in subsection (2)(b)(ii), then 5-2-404 applies.

12 ~~(c) If a vacancy occurs in a holdover senate seat after holdover senators have been assigned to new~~  
13 ~~districts under each reapportionment, the formula in subsection (2)(b)(ii) must be applied using the votes cast~~  
14 ~~for the senatorial candidates at the last election in which votes were cast for a senate candidate. Only the~~  
15 ~~number of votes cast by electors residing in the new senate district for senate candidates of the party to which~~  
16 ~~the person vacating the seat belonged may be counted. The secretary of state shall provide an estimate of the~~  
17 ~~number of votes cast for each party by county or portion of a county. The selection process is the same as~~  
18 ~~provided in subsection (2)(b)(iii).~~

19 (3) The appointment process to fill a vacant legislative seat under ~~this section~~ subsection (2) is as  
20 follows:

21 (a) Within 7 days of being notified of a vacancy as described in 2-16-501, the secretary of state shall  
22 notify the board of county commissioners and the county central committee of the county where the vacating  
23 legislator is a resident, if the legislative seat is within one county, or the boards of county commissioners and  
24 the corresponding county central committees if the legislative seat is in a multicounty district. If the legislator is  
25 an independent or belongs to a party for which there is no county central committee, the notification of county  
26 commissioners suffices.

27 (b) The county central committee or committees, upon receipt of notification of a vacancy, have 45 days  
28 to propose a list of prospective appointees, pursuant to 5-2-403(1). The county central committee or the county  
29 central committees, acting together, shall forward the list of names to the appointing board within the 45-day  
30 period.

(c) The appointing board shall make and confirm an appointment and notify the secretary of state within 15 days:

- (i) after receiving the list of prospective appointees from the county central committee or committees;
- (ii) after 45 days have expired after the notification of vacancy if the county central committee or committees have not provided a list of prospective appointees; or
- (iii) after notification of a vacancy if the legislator vacating the seat is an independent.

(4) If the legislature is in session, the notification process in subsection (3)(a) must be followed within 5 days. The process described in subsection (3)(b) must take place in 5 days. The process described in subsection (3)(c) must take place in 5 days.

(5) Notwithstanding subsection (6), if the legislature is not in session:

(a) if a vacancy occurs prior to a primary election, 13-10-326 applies ~~if~~ or

(b) if a vacancy occurs after a primary and prior to a general election, 13-10-327 applies.

(6) If the legislature is called into special session within 85 days of a general election, a person must be appointed to fill a legislative vacancy pursuant to subsections (1) through (4)."

**Section 3.** Section 5-2-404, MCA, is amended to read:

**"5-2-404. Procedure upon failure of one candidate to receive majority vote.** In the event that a decision cannot be made by the appointing board under 5-2-402 because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from the first and second lists of candidates as provided by 5-2-403 or from a list of three individuals if the predecessor served as an independent, in accordance with rules of selection adopted by the appointing board."

**Section 4.** Section 5-2-405, MCA, is amended to read:

**"5-2-405. Term of ~~appointee~~ legislator filling vacancy.** (1) Whenever the vacancy occurs in the house of representatives, the appointee shall serve until the end of the term to which ~~his~~ the appointee's predecessor was elected.

(2) Whenever the vacancy occurs in the senate, the ~~appointee shall serve until a successor can be elected as provided in 5-2-406~~ candidate winning the election required pursuant to 5-2-406 shall serve until the end of the term to which the candidate's predecessor was elected."

1           **Section 5.** Section 5-2-406, MCA, is amended to read:

2           **"5-2-406. Elections to fill vacancies in senate.** (1) ~~(a) Whenever~~ Except as provided in subsection  
3 ~~(1)(b), whenever~~ a vacancy occurs 85 days or more before the general election held during the second year of  
4 ~~the term, an individual may be appointed, pursuant to 5-2-402, if the legislature is called into special session.~~  
5 ~~However, the appointment may run only until a person is elected to complete the term at the upcoming general~~  
6 ~~election and sworn into office. in the senate, the vacancy must be filled by an election as provided for in this~~  
7 ~~section.~~

8           **(b)** If a vacancy in the senate occurs while the legislature is in session, the vacancy must be filled by  
9 a temporary appointment until the end of the session. The temporary appointment must be made as provided  
10 in 5-2-402.

11           **(2)** The election procedure to be used to elect the successor is as follows:

12           **(a)** Whenever the vacancy occurs 75 days or more prior to the primary election during the second year,  
13 the same procedure as is used for senators who will be elected to full 4-year terms at that general election must  
14 be ~~utilized~~ used.

15           **(b)** Whenever the vacancy occurs on or after the 75th day prior to the primary election, any political  
16 party desiring to enter a candidate in the general election shall select a candidate as provided in 13-10-327 and  
17 13-38-204. A political party shall notify the secretary of state of the party nominee. A person desiring to be a  
18 candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for  
19 an independent candidate must be filed with the secretary of state on or before the 85th day prior to the general  
20 election.

21           ~~(2)(c)~~ **(c)** Whenever a vacancy occurs on or after the 85th day prior to the general election held during the  
22 second year of the term, the person appointed by the board under 5-2-402 shall serve until the end of the term  
23 a special election to fill the vacancy must be conducted under the provisions of Title 13."

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25           **Section 6.** Section 5-2-407, MCA, is amended to read:

26           **"5-2-407. Anticipated vacancy in house of representatives.** (1) Whenever it appears that a vacancy  
27 will exist in the ~~legislature~~ house of representatives because of the inability of an elected legislator to take office  
28 at the commencement of the term to which the legislator was elected, an appointee may be selected in advance  
29 of the commencement of the term under the provisions of 5-2-402 through ~~5-2-406~~ 5-2-405.

30           **(2)** For purposes of determining the term of office of the appointee, the term of office commences on

1 the day on which the appointee takes the oath of office.

2 (3) An appointee under this section may take office only if the vacancy in fact exists at the  
3 commencement of the term of office."

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5 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

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